

**Appellate Tribunal for Electricity**  
**(Appellate Jurisdiction)**

**APPEAL No.231 OF 2012**

**Dated: 14<sup>th</sup> Nov, 2013**

**Present: HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM,  
CHAIRPERSON  
HON'BLE MR. V. J TALWAR, TECHNICAL MEMBER**

**In the Matter of:**

**Jindal Stainless Limited  
O.P. Jindal Marg,  
Hisar (Haryana)**

**..... Appellant**

**Versus**

- 1. Dakshin Haryana Bijli Vitran Nigam  
Vidyut Sadan, Vidyut Nagar,  
Hisar-125 005  
Haryana**
- 2. Haryana Electricity Regulatory Commission  
Bays No.33-36,  
Sector-4,  
Panchkula-134 109**

**..... Respondent(s)**

**Counsel for the Appellant : Mr. Amit Kapur  
Mr. Vishal Anand  
Ms. Aanchal Mullick  
Mr. R K Jain  
Mr. Sudeep Dey  
Mr. Saket Sikri**

Counsel for the Respondent(s): Mr. M G Ramachandran  
Mr. Anand K Ganesan  
Ms. Swapna Seshadri  
Ms. Swagatika Sahoo for R-1

## **J U D G M E N T**

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,  
CHAIRPERSON**

1. Jindal Stainless Steel Limited is the Appellant herein. First Respondent Dakshin Haryana Bijli Vitran Nigam (DISCOM) is one of the distribution licensees in the State of Haryana. Haryana Electricity Regulatory Commission is the 2<sup>nd</sup> Respondent.
2. The Haryana State Commission passed the impugned order dated 14.8.2012 dismissing the Petition filed by the Appellant seeking recovery of the power factor rebate allowed earlier on Cross Subsidy Surcharge levied on Open Access Customer and for setting-aside the sales Circular issued by the DISCOM and clarifications issued by the State Commission.
3. Aggrieved by the said order, the Appellant has filed this Appeal.
4. The facts of the case in brief are as follows:-

- (a) The Appellant is a Public Limited Company which is engaged in the business of manufacturing high quality cold rolled and hot rolled stainless steel at its Industrial Unit situated in Hissar, Haryana.
- (b) The Appellant's Company is Large Supply Industrial Consumers of the Dakshin Haryana Bijli Vidyut Nigam Limited (Dakshin DISCOM), the First Respondent. It has a sanctioned contract demand of 125 MVA and a sanctioned connected load of 115 MW.
- (c) On 22.12.2000, the Haryana State Commission, the Second Respondent, approved the Annual Revenue Requirement and Retail Distribution Tariff for the Financial Year 2000-01. In the said order, the Haryana State Commission introduced rebate on power factor for High Tension (HT) Industrial and Steel Furnace Power Supply to bring greater efficiency in the system.
- (d) On 10.8.2004, the State Commission notified HERC (Electricity Supply Code), 2004 (**Haryana Supply Code**) under section 86(1)(h) of the Electricity Act. Under Regulation 2 (8) of the Supply Code, the term Consumption Charges has been defined. Regulation 3 provides for recovery of electricity charges from the consumers.

- (e) On 19.5.2005, the State Commission notified the HERC (**Terms and Conditions for Open Access for Intra State Transmission and Distribution System**) Regulations, 2005 (**Open Access Regulations, 2005**).
- (f) On 5.11.2008, the Dakshin DISCOM (R-1) issued circular by which it was intimated that the consumption charges as defined in the HERC “Electricity Supply Code” dated 10.8.2004 shall be reckoned with while estimating Power Factor Rebate/Penalty.
- (g) On 19.12.2008, the Haryana State Commission notified HERC (**Terms and Conditions for Determination of Wheeling Tariff and Distribution and Retail Supply Tariff**), 2008 (“**Tariff Regulations, 2008**”). These Regulations also provide for power factor rebate/penalty.
- (h) On 12.5.2009, the State Commission notified the Haryana Grid Code wherein the terms “beneficiary” and “user” are defined. It also specified charges for the Reactive Power Consumption/injection which is applicable to the beneficiaries. On that basis, the Appellant and some other consumers filed Petition before the State Commission to allow the power factor rebate relying upon the definition of the consumption charges.

- (i) On 25.3.2010, the Haryana State Commission disposed of the case on these Petitions allowing the Power Factor Rebate to the appellant relying upon the definition of the consumption charges. Accordingly, the Dakshin DISCOM (R-1) was given rebate on Power Factor to the Appellant on supply of power including the Cross Subsidy Surcharge amount.
- (j) In the meantime, the Dakshin DISCOM filed a Petition for Annual Revenue Requirement and Retail Supply Tariff for the Financial Year 2011-12. In this Petition, the Haryana State Commission by the order dated 27.5.2011, approved the ARR and Retail Supply Tariff for the Financial Year 2011-12 and made the Cross Subsidy Surcharge applicable from the dates when the Government of Haryana removed the waiver on Cross Subsidy Surcharge.
- (k) On 28.7.2011, the State Commission issued a clarification to the Dakshin DISCOM (R-1) stating that *“there is provision for levy of reactive energy charges in the Open Access Regulations, as such, the Power Factor Rebate/Penalty is not payable/leviable in this case”*.
- (l) This clarification came to be issued on the following query:

*“As per the Tariff Schedule approved by the State Commission for Retail Supply business, there is a provision for Power Factor Rebate/Penalty on HT Industrial Consumers. The Power Factor Rebate/Penalty is to be given on sale of power charges. However, if a HT Industrial Consumer is also drawing power through Open Access, then it needs to be clarified whether the Power Factor Rebate/Penalty would be given on the quantum of power drawn through Open Access”.*

- (m) Clarification above referred to, was in pursuance of the reply made by the DISCOM to the query.
- (n) Relying upon such clarification dated 28.7.2011; the Dakshin DISCOM (R-1) issued a sale Circular dated 15.9.2011.
- (o) On 11.1.2012, the Haryana State Commission issued HERC (Terms and Conditions for Grant of Connectivity and Open Access for Intra State Transmission and Distribution System) Regulations, 2012 (**“Open Access Regulations, 2012”**).
- (p) On 3.2.2012, the Dakshin DISCOM (R-1) issued a Notice to the Appellant forwarding the Internal Audit Report dated 12.1.2012 informing the Appellant that the Power Factor Rebate could not be given to the Appellant in the light of the clarifications issued by the Haryana State Commission dated 28.7.2011 as well

as the Circular issued by DISCOM dated 15.9.2011 and accordingly, the DISCOM claimed refund of the rebate i.e. 80,68,996/- as a levy in the Appellant's bill to retrospectively take back the Power Factor Rebate for the period from January, 2011 to December, 2011.

- (q) On 21.2.2012, on receipt of the Notice, the Appellant submitted its response and requested the DISCOM to re-examine the issue and not to re-charge the rebate on the Cross Subsidy Surcharge component of the bill. However, the Dakshin DISCOM (R-1) ignored the reply sent by the Appellant including the amount of Rs.80,68,996 in the monthly electricity bill issued on 1.3.2012.
- (r) Since there was a threat of disconnection of supply, the Appellant on 7.3.2012, made entire payment of the bill under protest reserving its right to take-up the matter before the Appropriate Authority.
- (s) Thereupon, the Appellant in April, 2012, filed a Petition before the State Commission u/s 86 (1) (a) and Section 94(1) (f) of the Electricity Act, 2003 praying for setting aside the Sale Circular dated 15.9.2011 and the clarifications issued by the State Commission dated 28.7.2011 and consequently, the DISCOM be directed to refund the amount of Rs.80,68,996/- towards the Power Factor Rebate

earlier allowed for the period from January, 2011 to December, 2011.

- (t) In the said proceedings, both the Appellant and Distribution Companies were heard by the State Commission. Ultimately, the State Commission by the impugned order dated 14.8.2012, dismissed the Petition filed by the Appellant on various grounds.
- (u) Challenging the said order, the Appellant has filed the present Appeal.

5. The learned Counsel for the Appellant **made the following submissions** assailing the impugned order.

- a) To clarify the term as “Beneficiary” under Haryana Grid Code a person must have share in State or inter-State generating station. In the present case, the Appellant does not meet the above requirements since it has no share or contractual agreement to any such generating station and it procures power from two sources (1) as an industrial consumer of the Distribution of Licensee and (2) As an open access consumer, purchasing power from the Power Exchange platform where there is no identity of buyers or sellers. As such, the payment has to be made by the beneficiary for reactive energy drawn when voltage is below 97 of the rated voltage or reactive

energy returned when the voltage is above 103% of the rated voltage. Payment has to be made to the beneficiary when it draws reactive power during the period of voltage being higher than 103% of the rated voltage or he returns reactive power, when voltage is lower than 97% of the rated voltage. In the present system of metering, there is no such measurement of the reactive energy flow for the power purchased through open access.

- b) The State Commission relied upon Regulation 25 of the Open Access Regulations,2012 to conclude that the Appellant is liable to pay reactive energy charges without considering the fact that the reactive energy charges must be consistent with the Indian Electricity Grid Code and Haryana Grid Code as applicable. Regulation 4.10 of Haryana Grid Code squarely puts responsibility for reactive power compensation on the transmission and distribution licensees. As such, the Haryana Grid Code does not permit the State Commission or the Distribution Licensee to pass this burden on to the Appellant.
- c) The Appellant is an embedded Open Access consumer. The term “embedded Open Access consumer” and “beneficiary” are distinct. They carry different specific meanings which can not be used

interchangeably or be intermingled without violating Regulations. The Appellant is getting power under the overall “contract demand” sanctioned by the Distribution Licensee irrespective of the fact that the Appellant purchased power through Open Access as a part of sanctioned “contract demand”, the Appellant continues to pay the fixed charges on the entire sanctioned contract demand to the Licensee. Therefore, it can not be said that the Appellant has any share in the intra-State or inter-State generating station.

- d) The State Commission issued clarification dated 27.8.2011 in violation of the principles of natural justice and transparency. Admittedly, the clarification was issued without issuing any public notice. Section 86(3) of the Act, 2003 mandates the State Commission to ensure transparency while exercising its power and discharge its function. The concept of transparency and principles of natural justice mandates the State Commission that it should grant a hearing before passing any order detrimental to the party. Thus, the State Commission has violated the principles of natural justice and transparency.

6. In reply to the above submissions, the learned Counsel for the Respondent, in support of the impugned order has made elaborate submissions, which are as follows:-
- a) The Appellant is a beneficiary as defined in terms of Regulation 2(8) of the Haryana Grid Code, 2009. A person can simultaneously be an embedded consumer as well as the beneficiary to the extent of power drawn through Open Access if the Appellant is deriving a part of the power through Open Access and balance quantum from the Distribution from the Distribution Licensee then the Appellant need not pay reactive power compensation for the power derived by the Appellant through Open Access.
  - b) If the Appellant is not drawing power for consumption under a “contract demand” with the distribution licensee, the Appellant necessarily has a share in the intra-State generating station or inter-State generating station for procurement of power. The Appellant to that extent is a “beneficiary” as defined in Haryana Grid Code. The State Commission has correctly decided that such apportionment should be based on the proportionate quantum of active power consumption from the two sources. There is no perversity in the said decision.

- c) The power factor rebate/penalty is applicable only on the sale of power charges which does not include the charges payable in terms of Section 38,39,40,42(2) of the Electricity Act,2003. The charges payable by the Open Access consumer to the Distribution Licensee is for transmission, wheeling and Cross Subsidy and not quantum of power supply. With the adjustment of reactive power compensation the Open Access consumer gets benefit of quantum of power charge by him. Therefore, there is no adjustment requirement to be done for power factor.
- d) The clarification issued by the State Commission dated 27.8.2011 is not an order imposing charges for the reactive power consumption. Therefore, there is no violation of principles of natural justice.
7. Having regard to the rival contentions urged by the learned Counsel for the parties, the following questions of law may arise for our consideration:
- (a) Whether a person who is an embedded customer receiving power from the Distribution Company, seeks to draw power through Open Access, is obligated to pay the Reactive Energy Charges for the quantum of power taken on Open Access?

- (b) Whether the Power Factor Rebate provided for in the Tariff Order is applicable to the Appellant for the quantum of the power taken by the Appellant on Open Access?
  - (c) Whether the Cross Subsidy Surcharge payable by the Open Access Consumer is to be treated as a part of the electricity charges and need to be taken on account as consumer charges while deciding on the rebate admissible for the Power Factor ?
  - (d) Whether there has been any violation of the Principles of Natural Justice?
- 8.** Before dealing with these questions, let us refer to the crux of the findings given by the State Commission in the impugned order dated 14.8.2012 dismissing the Petition filed by the Appellant. The crux of the findings is as follows:
- (a) Till the time entire regulatory assets are amortized and reflected in the tariff, as well as all the fuel surcharge adjustments whose recovery has been staggered over a period of 24 to 36 months is also built into the tariff, the tariff in vogue cannot be said to be cost reflective. In such a scenario, the cross subsidy cannot be quantified/ascertained.
  - (b) For the limited purpose of working out cross Subsidy Surcharge applicable as compensatory charge to the

Open Access Consumers, the difference between the average cost to serve and tariff is considered as cross subsidy surcharge.

- (c) In the absence of an updated CoS study submitted by the power utilities and fully aligned consumer tariff the cross subsidy surcharge as appearing in the annual tariff order of the State Commission is indicative and for a specific purpose and hence ought not to be generalized for any other purpose.
- (d) The Haryana State Commission has agreed that the Petitioner is an embedded consumer and in terms of Regulation 25 of the Open Access Regulations, 2012, Appellant should pay reactive energy charges.
- (e) The State Commission observed that there is a settlement mechanism specified under the Open Access Regulations, 2012 based on which the Appellant pays energy charges as determined by the State Commission only on the 'balance energy/consumption' after reducing its entitlement through open access.
- (f) The State Commission has admitted that the existing metering arrangements does not support separate recording of energy drawal from Open Access and that from the distribution licensee of the area.

- (g) As the State Utilities are paying for the reactive energy drawal to the NRLDC, payment of rebate/penalty on power factor would amount to double counting.
- (h) The State Commission arrived at a sub-optimal solution of apportioning the reactive energy in the ratio of active energy drawn through Open Access segregated as per the settlement mechanism as provided in Regulation 43 (1).
- (i) The State Commission relied upon its clarification dated 28.7.2011 and order dated 3.11.2011.

9. Let us now deal with each of the Questions.

10. The **First Question** relates to the **obligation on the part of the Appellant to pay the Reactive Energy charges for the quantum of power taken on Open Access.**

11. The learned Counsel for both the parties made detailed submissions on this question.

12. The submission of both the parties revolves around the definition of the terms “beneficiary” in the Open Access Regulations and on the metering arrangements.

13. According to the Appellant the Appellant is not a beneficiary in terms of the Regulations and as such he is not liable to pay reactive energy charges.

14. On the other hand, the learned Counsel for the Respondent submits that the Appellant falls within the definition of the term “beneficiary” and accordingly, it is liable to pay reactive energy charges.
15. The issue is as to whether the Appellant is drawing reactive energy. The State Commission relied upon Regulation 25 of the Open Access Regulations, 2012 to decide that the Appellant is liable to pay reactive energy charges.
16. According to the Appellant, Regulation 4.10 of the Haryana Grid Code squarely puts responsibility for reactive power compensation on the transmission and distribution licensees. As such, the Haryana Grid Code does not permit the State Commission or the Distribution Licensees to pass on this burden on to the Appellant.
17. Transmission of reactive energy causes extensive line losses. The entire case of the Respondent hinges upon the fact that the Appellant is a beneficiary and remains under the Haryana Grid Code. If the Appellant is drawing reactive energy from the Grid, it is liable to pay for the reactive energy it has drawn irrespective of whether it fits into the term “beneficiary” or not.
18. In this case, the Appellant has claimed that its power factor remains at 0.995 lagging. Thus, it is clear, that the Appellant draws reactive power from the Grid and is,

therefore, liable to pay reactive energy charges as per the Regulations fixed in the reactive energy charges.

- 19.** In this context, it would be worthwhile to refer to Clause 5.5 (a) of the Haryana Grid Code. This Clause specifies the charges for reactive energy which is as under:

*5.5 (a) Reactive power compensation should ideally be provided locally by generating reactive power as close to the reactive energy consumption as possible. The beneficiaries are, therefore, expected to provide local VAr compensation/generation such that they do not draw VARs from the grid, particularly under low voltage conditions. To discourage VAr draws by beneficiaries, VAr exchange with State Transmission System shall be priced as follows:*

- *The beneficiary pays for VAr drawl when voltage at the metering point is below 97%;*
- *The beneficiary gets paid for VAr return when voltage is below 97%;*
- *The beneficiary gets paid for VAr drawl when voltage is above 103%;*
- *The beneficiary pays for VAr return when voltage is above 103%.”*

- 20.** The reading of the above Clause would indicate that any person, who draws reactive energy from the Grid when voltage is less than 97%, is liable to pay for reactive charge. However, he is not liable to pay any charge for reactive energy when the grid voltage is 97% or more. This provision requires the availability of suitable metering system. A metering system, which records the voltage

along with other parameters such as active and reactive power drawals. Without such meters, the scheme of reactive power charges cannot be implemented. The State Commission has suggested allocating total reactive power drawn by the Appellant on pro-rata basis. This cannot be the proper approach. As indicated earlier, the payment has to be made by the beneficiary for the reactive energy drawn only when Voltage is below 97% of the rated voltage or reactive energy returned when the voltage is above 103% of the rated voltage. The beneficiary gets paid when he injects reactive power when voltage is less than 97% or draws reactive energy when voltage is more than 103%.

For this transaction of making payment or getting paid on account of reactive energy flow needs corresponding figures of reactive energy flow at the time of the threshold voltages prevailing in the system. In the present system of metering admittedly there is no such measurement of the reactive energy flow for the power purchased through Open Access.

- 21.** As indicated above, the Regulations provide that when the energy charges would become payable only when beneficiary draws reactive power when voltage is less than 97%, then it can only be levied when voltage is less than 97% measured with proper metering system. The metering

system installed at the Appellant's premises is capable of recording the following parameters:

- (i) Active energy (kWh) drawn in 15 minutes time slots and cumulative figure over the month.
- (ii) Virtual energy (kVAh) drawn in 15 minutes slots and cumulative figure over the month.
- (iii) Frequency recorded over the 15 minutes time slots.
- (iv) Reactive energy drawn at times when the voltage at the metering point is below 97% or above 103%.

**22.** The meter does not record and store the voltage in 15 minute's time blocks. It is true that with the availability of kVAh and kWh in 15 minute's time blocks, the reactive power consumption can be easily computed for each time block using the formula

$$\text{kVArh} = \text{Sqrt} (\text{kVA}^2 - \text{kWh}^2).$$

**23.** But, in the absence of corresponding voltage for each time slots, it would not be possible to allocate the reactive power consumption for the purpose of reactive power charges.

**24.** There is no recording of the corresponding Active Energy drawal during the period when the frequency at the metering point is below 97% or above 103%. In the absence of corresponding figures of the active energy and the reactive energy available from the meter, it is not

possible to draw proportion of the two figures which are for different time durations.

25. That apart, the Active Energy figures recorded for the entire month cannot be compared with the reactive energy recorded for the specific time duration corresponding to the specific variation in voltage at the metering point.
26. While the Reactive Energy Charges as covered under Regulation 5.5 of the Haryana Grid Code speaks of debit and credit based on injection or drawal of reactive power at particular interval when the supply voltage is above 103% or below 97% of the rated voltage, the active power flow is right throughout the day irrespective of the period of threshold limits of the supply voltage.
27. Hence, the methodology adopted by the State Commission is without application of mind. Hence, the conclusion by the State Commission cannot be held to be valid.
28. Accordingly, the **First Issue** is decided in **favour of the Appellant.**
29. The **Second Question** relates to **the applicability of the power factor rebate to the Appellant for the quantum of power taken by the Appellant for Open Access.**
30. Let us first understand the concept of power factor and its effects on the system. The concept of “Power Factor” and

“its effects on the System” is explained in the following paragraphs.

- 31.** Consumption of electrical power by a consumer is depends upon the system voltage and the current it draws from the system. In the Direct Current (DC) systems it is equal to the product of voltage and current. Mathematically

$$\text{Power} = \text{Voltage} \times \text{Current} (P = V \times I).$$

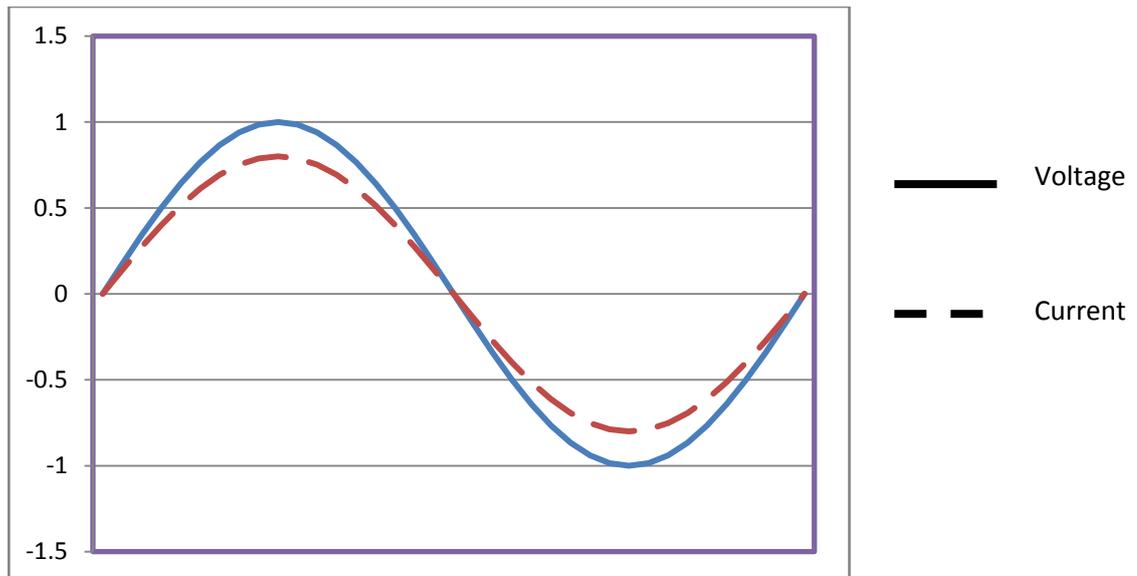
However, this is not true for Alternating Current (AC) systems. In AC systems Power is proportional to the product of voltage and current or

$$\begin{aligned} \text{Power} &\propto \text{Voltage} \times \text{Current}; \text{ or} \\ \text{Power} &= K \times \text{Voltage} \times \text{Current}. \end{aligned}$$

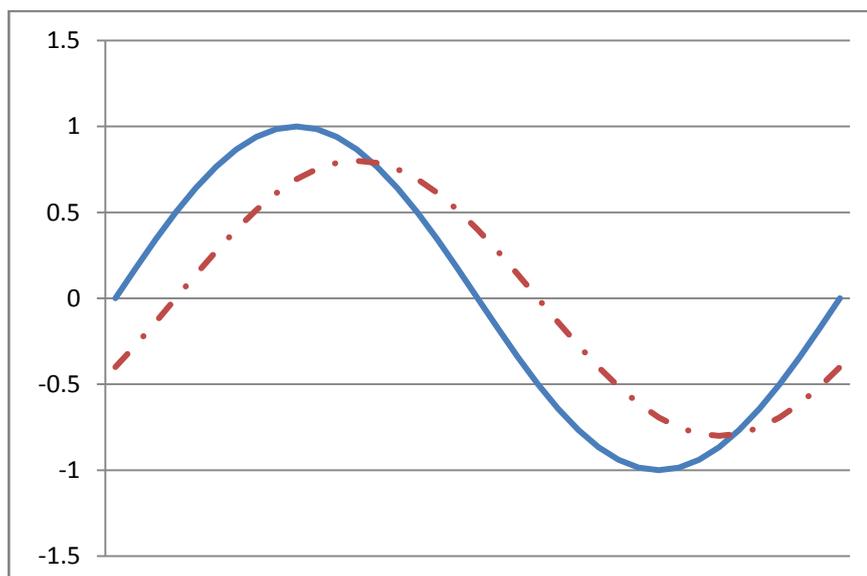
Where K is a constant and is commonly known as ‘Power Factor’. Mathematically, it is equal to ‘cosine of angular displacement between Voltage and Current.

Power Factor =  $\cos \theta$  where  $\theta$  is the angle between the Voltage and the Current.

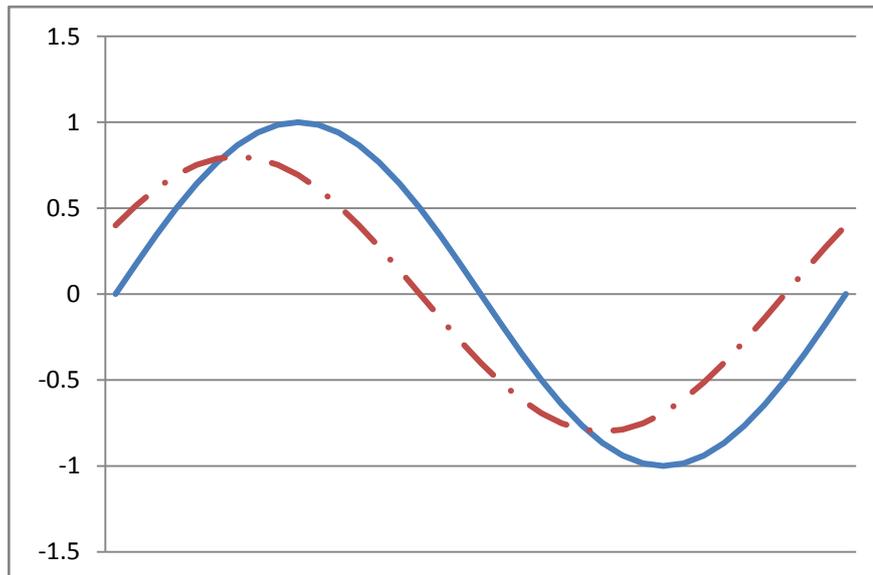
In pure resistive circuits, like room heaters, bulbs, the angle ( $\theta$ ) between voltage and current is zero and therefore, power factor ( $\cos \theta$ ) is equal to unity. The graphical representation of this phenomena is shown below:



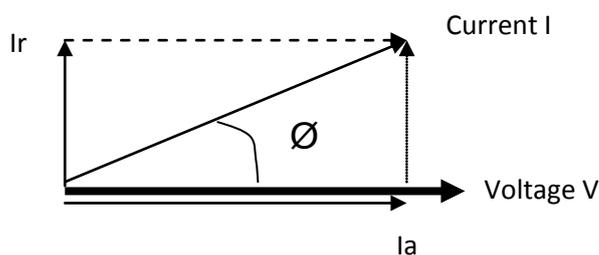
- 32.** However, in inductive circuits, like induction motors, tubes etc., currents lags behind the voltage and angle between voltage and current varies between 0 to 90 degrees. Thus, power factor in inductive circuits varies between 1 to 0. Since current lags the voltage in inductive circuits, the power factor of inductive circuits is known as lagging power factor. The graphical representation of lagging current is shown is figure below:



**33.** On the other hand, in capacitive circuits, like shunt capacitors, CFLs etc., the current leads the voltage and angle between voltage and current again varies between 0 to 90 degrees. Thus, power factor in capacitive circuits also varies between 1 to 0. Since current leads the voltage in capacitive circuits, the power factor of capacitive circuits is known as leading power factor as shown below: The above concept can be represented graphically as under:



Now Current vector ( $I$ ) can be resolved in two perpendicular vectors viz.,  $I_a$  and  $I_r$  using parallelogram law of forces so that the vector  $I_a$  is parallel to voltage vector and vector  $I_r$  is perpendicular to voltage vector as shown below.



Vector  $I_a$ , parallel to voltage vector, is known as active current and vector  $I_r$ , perpendicular to voltage, is known as reactive current. Product of Voltage and active current is the Active Power or Power and the product of voltage and reactive current is known as reactive power. Mathematically:

$$\begin{aligned} \text{Active Power} &= V \times I_a \\ &= V \times I \times \cos \phi \\ \text{Reactive Power} &= V \times I_r \\ &= V \times I \times \sin \phi \\ \text{Virtual Power} &= V \times I \end{aligned}$$

For same amount of power Current  $I$  would be minimum when power factor is equal to unity or when angle  $\phi$  is equal to zero. At angle equal to 90 degrees current would be maximum and power would zero. Line losses are proportional to the square of the current. If a consumer draws power at unity power factor system losses caused by him would be minimum. However, if his power factor is poor say 0.5 then he would cause the loss four times the loss at unity power factor. This phenomenon can be understood by the following illustration. Suppose a consumer draws 220 MW of power at 220 kV. The system resistance up to its network is say 1 ohm. The table below would give system loss at various power factors:

<b>Power Factor</b>	<b>Current (amps)</b>	<b>Loss (MW)</b>
1	1000.0	1.00
0.95	1052.6	1.11
0.9	1111.1	1.23
0.85	1176.5	1.38
0.8	1250.0	1.56
0.75	1333.3	1.78
0.7	1428.6	2.04
0.65	1538.5	2.37
0.6	1666.7	2.78
0.55	1818.2	3.31
0.5	2000.0	4.00
0.45	2222.2	4.94
0.4	2500.0	6.25
0.35	2857.1	8.16
0.3	3333.3	11.11
0.25	4000.0	16.00
0.2	5000.0	25.00
0.15	6666.7	44.44
0.1	10000.0	100.00

It is to be noted that current drawn at a lower power factor also causes excessive voltage drop which would further increase the system losses. Thus, it is proved that lower power factor causes higher system losses and loss to the distribution licensee. The very purpose of providing higher power factor incentive is to encourage the consumers to improve their power factor by providing shunt compensation and bring it as close as possible to unity so that the system losses are reduced to the minimum. This is

a pure technical and engineering principle and it does not distinguish as to whether the power has been drawn from the licensee or on availing the 'open access'.

- 34.** The above analysis would show that very purpose to provide higher power factor rebate is to encourage the consumer to maintain high power factor and to minimize the system losses. Any loss before the meter installed at consumer's premises is on account of the distribution licensee. In order to reduce these losses, the State Commission has incentivized high power factor based on pure technical and engineering principle. It has nothing to do with the source of power. Accordingly, power factor rebate is payable to the consumer who also avails open access.
- 35.** Therefore, the findings on this issue rendered by the State Commission are wrong. Accordingly, answered.
- 36.** The **Third question** for consideration is **“as to whether the Cross Subsidy Surcharge payable by the Open Access Consumer is to be treated as a part of the electricity charges and need to be taken into account as consumer charges while deciding on the rebate admissible for the power factor?”**
- 37.** On this issue the learned Counsel for the Appellant makes the following submissions:-

- (a) The Cross-subsidy surcharge forms part of Sale of Power(SoP).
- (b) Till date the Dakshin Discom is recovering penalty on the low power factor and penalty for exceeding contract demand(MDI penalty) on the SoP, which includes cross-subsidy surcharge.
- (c) Learned Haryana Commission can not permit the utility to use different yardstick to the consumers while giving rebate and recovering MDI Penalty, when both are to be charged on SoP.
- (d) The aforesaid treatment is contrary to any commercial principles and is liable to be quashed.
- (e) Accordingly, the rebate should be allowed on cross-subsidy surcharge, which forms part of the SoP.

**38.** On the other hand, the learned Counsel for Respondent submits the following:-

The Power Factor Rebate/Penalty is applicable only on the sale of power charges as per the schedule of tariff of supply of electricity. The sale of power charges are charges which are recoverable for supply of power by the distribution licensees to a consumer such as the energy charges, fixed charge, fuel supply adjustments etc. It does not deal with the charges

payable in terms of Section-38, 39, 40, and 42(2) of the Electricity Act as compensatory charges for the consumers opting for the Open Access power.

- 39.** We have carefully considered the submissions of the parties on this issue. High Power Factor reduces the system loss and vice-versa. This is purely a technical and engineering principle. It has universal application irrespective of source of power. If a consumer procures power from other sources through open access at high power factor, the system loss would be less as in the case of his drawal of power from the distribution licensees.
- 40.** As mentioned above, the learned counsel for the 1<sup>st</sup> Respondent contended that the power factor rebate/penalty is applicable only on the sale of power charges as per the schedule of tariff of supply of electricity and the sale of power charges are charges which are recoverable for the supply of power by the distribution licensees to consumer such as energy charges, fixed charges, fuel supply adjustments etc and this dose not includes the surcharge payable in terms of Section-38, 39, 40 and 42(2) of the Electricity Act.
- 41.** The State Commission in its order on Distribution and Retail Supply ARR and Tariff-2000 dated 22.12.2000 provided the scheme for incentive/penalty for high/low

power factor. The relevant portion of the order is quoted as below:-

*“Annexure 3 – Schedule of Tariff for Supply of energy 4. HT Industrial and Steel Furnace Power Supply:*

*(viii) Power Factor*

*The monthly average power factor of the plant and apparatus installed by the consumer shall not be less than 90% lagging. The monthly average power factor shall mean the ratio expressed, as percentage of total kWh to total KVAH supplied during the month, The ratio shall be rounded up to two figures. In case the monthly average power factor falls below 90% lagging, the consumer shall have to pay a surcharge of 1% of SOP charges for every 1% decrease in the power factor upto 80% and 2% of SOP charges for every 1% decrease in Power Factor below 80%. Rebate of 0.5% on SOP will be allowed for every 1% increase in Power Factor above 90%.”*

**42.** The State Commission also notified Haryana Supply Code Regulations on 10.8.2004. Regulation 3 of the said Supply Code specified the charges to be recovered from the consumers. The said Regulation is extracted as below:-

**“3. Recovery of Electricity Charges from consumers**

*(a) The distribution Licensee shall recover the electricity charges for the electricity supplied to the consumer as per the tariff determined by the Commission from time to time in accordance with the provisions of the Act.*

*(c) The consumer shall pay following charges, in addition to the charges for the electrical energy supplied, as approved by the Commission from time to time:-*

- 1. All surcharges, Additional Surcharges**
- 2. Additional charge for delayed payment**

3. **Wheeling charges**
4. *FSA (Fuel surcharge adjustment) Charge*
5. *Rental, if any, towards meters & other electric plant and equipment of the Licensee*
6. *Miscellaneous charges such as penal charges for exceeding sanctioned demand,*
7. **Any other charges applicable”**

43. The perusal of the above Regulation would reveal that the sale of power charges would include surcharge and additional surcharge. According to the Respondent, the term “Surcharge” as mentioned in the Regulation 3 is not the Cross Subsidy Surcharge. This submission is not correct. The term “Surcharge:” is defined in Regulation 2(19) of the same Supply Code. This is quoted below:-

**“2(19) “Surcharge” means surcharge determined by the Commission under Section 39(2)(d)(ii), 40(c)(ii) and 42(2).”**

44. This would indicate that the surcharge is referred to in Regulation 3 is the Cross Subsidy Surcharge payable by Open Access consumer and the incentive on power factor would also be applicable on this amount.
45. According to the Appellant, the Appellant is availing Open Access since 2009 and at no time in the past, Power Factor Rebate was disallowed to the Appellant and in fact in its order dated 25.3.2010 the State Commission observed the

fact that the Appellant has been availing power through Open Access after paying wheeling charges.

- 46.** The learned Counsel for the Appellant also drew our attention towards the dual policy being followed by the Licensee by considering the definition of SOP charges while levying Power Factor Penalty and MDI Penalty. While in both these cases, the penalty/rebate is to be worked out on SOP charges, the Respondent DISCOM is including cross subsidy surcharge in the Sale of Purchase charges while levying penalty but refusing to include the cross subsidy surcharge element for giving rebate.
- 47.** The power factor rebate has been disallowed on the Cross Subsidy Surcharge element for the Open Access consumer. The said action is contrary to the Regulations as well as the order dated 25.3.2010 passed by the State Commission.
- 48.** According to the Appellant, when the Cross Subsidy Surcharge is by all means a part of Sale of Power charges and accordingly “Penalty for exceeding MDI” and Penalty/Rebate on the power Factor is to be levied on the Sale of Power charges including Cross Subsidy Surcharge.

- 49.** As pointed out by the Appellant, the Respondent till date has been recovering penalty on the low power factor and penalty for exceeding contract demand on the sale of power, which includes Cross Subsidy Surcharge. Therefore, the State Commission now cannot permit the utility, the Respondent to use different yardstick to the consumer while giving rebate and recovering MDI penalty, when both are to be charged on sale of power. Therefore, this treatment is contrary to the commercial principles. This point is decided accordingly.
- 50.** **The fourth and last issue is with reference to the violation of the principles of natural justice and transparency.**
- 51.** The learned Counsel for the Appellant has contended that the State Commission issued clarification dated 28.7.2011 in violation of the principles of natural justice and transparency. The crux of the submission is as follows:-
- (a) The Clarification dated 28.07.2011 was issued by Commission without issuing any public notice.
  - (b) No opportunity of comments and suggestion was granted to public at large including the affected parties such as Appellant.
  - (c) Section 86 (3) of the Electricity Act, 2003 mandates the Commission to ensure transparency while exercising its power and discharging its function. The

concept of transparency and Principles of Natural Justice mandates that the Ld. Haryana Commission should grant hearing before passing any order detrimental to a party.

- (d) The clarification dated 28.07.2011 issued by the Commission violates Principles of Natural Justice – which mandate that before passing any order detrimental to a party, notice and opportunity of hearing should be given to such party. Any order issued in violation of the Principle of Natural Justice is illegal and is liable to be set aside. The Appellant relies upon the ruling in ***Sahara India (Firm) Lucknow Vs Commissioner of Income Tax*** reported in ***(2008) 14 SCC 15***.

- 52.** Refuting the submissions of the Appellant, the learned Counsel for the Respondent submitted that the clarification issued by the State Commission dated 28.7.2011 is not an order imposing charges for the reactive power compensation as the same is payable in terms of Regulation 25 of the Open Access Regulation and the Haryana Grid Code and therefore there is no violation of natural justice when the State Commission clarifies to Distribution Licensee of any question that may be raised from time to time.

**53.** We are unable to accept this reply submission made by the Respondent. The similar issue came up before this Tribunal in Appeal No.204 of 2010 in Faridabad Industrial Association Vs Haryana State Commission. This Tribunal in its judgment dated 11.8.2011 has held as follow:-

*“...After examining all the documents submitted before us and considering the contentions of all the parties, we have framed the following issues for consideration:*

*...*

***v) Has the State Commission violated the principles of natural justice in amending the tariff of LT consumers by way of suo motu clarification by a subsequent communication dated 4.10.2010 imposing monthly minimum charges?***

*...*

*12.5. In our opinion, the clarification issued by the State Commission on 4.10.2010 raising the monthly minimum charges for LT industrial consumers without hearing the concerned parties is against the principles of natural justice and Section 64(3) and 84(3) of the Act and the same is set aside. The State Commission may hear the concerned parties and pass a reasoned order in the matter which shall be applicable prospectively. Till then the Monthly Minimum charges as applicable to LT industrial consumer upto 20 kW prior to the date of the impugned order shall continue.”*

**54.** The above judgment would show that this Tribunal has held that the issuance of clarification without hearing the stakeholders is against the principles of natural justice and

accordingly, the impugned order in that Appeal was set aside to that extent. The facts of the present case would squarely apply to the above case.

**55.** In view of the above, we are of the view that the State Commission has violated the principles of natural justice in issuing the clarification without hearing the Appellant. So this issue is also decided in favour of the Appellant.

**56. Summary of the findings:-**

- I. The existing metering system is not adequate to voltage during 15 minute time slot. There is no recording of the corresponding Active Energy drawal during the period when the frequency at the metering point is below 97% or above 103%. In the absence of corresponding figures of the active energy and the reactive energy available from the meter, it is not possible to draw proportion of the two figures which are for different time durations. That apart, the Active Energy figures recorded for the entire month cannot be compared with the reactive energy recorded for the specific time duration corresponding to the specific variation in voltage at the metering point. Hence, the methodology**

adopted by the State Commission is without application of mind. Hence, the conclusion by the State Commission cannot be accepted.

- II.** The very purpose to provide higher power factor rebate is to encourage the consumer to maintain high power factor and to minimize the system losses. Any loss before the meter installed at consumer's premises is on account of the distribution licensee. In order to reduce these losses, the State Commission has incentivized high power factor based on pure technical and engineering principle. It has nothing to do with the source of power. Accordingly, power factor rebate is payable to the consumer who also avails open access.
- III.** As per clause 2(19) of the Supply Code, the surcharge referred to in Regulation 3 is the Cross Subsidy Surcharge payable by Open Access consumer is a part of SoP charges and, therefore, the incentive on power factor would also be applicable on this amount. The Respondent till date has been recovering penalty on the low power factor and penalty for exceeding contract demand on the sale of power including Cross Subsidy Surcharge form imbedded open access

consumers. The licensee cannot probate and approbate at the same time. Therefore, the State Commission now can not permit the utility, the Respondent to use different yardstick to the consumer while giving rebate and recovering MDI penalty, when both are to be charged on sale of power. Therefore, this treatment is contrary to the commercial principles.

- IV. This Tribunal in its judgment in Appeal No. 204 of 2010 has held that the issuance of clarification without hearing the stakeholders is against the principles of natural justice and accordingly, the impugned order in that Appeal was set aside to that extent. The facts of the present case would squarely apply to the above case. We are, therefore, of the view that the State Commission has violated the principles of natural justice in issuing the clarification without hearing the Appellant.

**57.** In view of our findings above the Impugned Order is set aside. The 2<sup>nd</sup> Respondent is directed to remit the amount recovered from the Appellant as power factor rebate along with interest at 9% per annum. The Appeal is accordingly allowed. However, no order as to costs.

**(V J Talwar)**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

Dated: 14<sup>th</sup> Nov, 2013

√REPORTABLE/~~NON-REPORTABLE~~